

Part 13—Investigative and Enforcement Procedures

This change incorporates two amendments:

Amendment 13-25, Revision of Authority Citations, adopted December 20 and effective December 28, 1995, updates the authority citations listed in the Code of Federal Regulations to reference current law. No substantive change is introduced to Part 13 by this amendment.

Amendment 13-26, Civil Penalties: Streamlined Enforcement Procedures for Certain Security Violations, adopted August 23 and effective August 26, 1996, adds § 13.29. SFAR 72 expires on August 26, 1996.

Bold brackets enclose the newly added material. The amendment number and effective date appear in bold brackets at the end of the section.

Page Control Chart

Remove Pages	Dated	Insert Pages	Dated
P-109	—	P-109 through P-114	Ch. 2
Subpart C	—	Subpart C	Ch. 2
S-1 through S-8	—		

Suggest filing this transmittal at the beginning of the FAR. It will provide a method for determining that all changes have been received as listed in the current edition of AC 00-44, Status of Federal Aviation Regulations, and a check for determining if the FAR contains the proper pages.

authority upon the Federal Aviation Administration were recodified into positive law. This document updates the authority citations listed in the Code of Federal Regulations to reference the current law.

DATES: This final rule is effective December 28, 1995. Comments on this final rule must be received by March 1, 1996.

FOR FURTHER INFORMATION CONTACT: Karen Petronis, Office of the Chief Counsel, Regulations Division (AGC-210), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267-3073.

SUPPLEMENTARY INFORMATION: In July 1994, the Federal Aviation Act of 1958 and numerous other pieces of legislation affecting transportation in general were recodified. The statutory material became "positive law" and was recodified at 49 U.S.C. 1101 *et seq.*

The Federal Aviation Administration is amending the authority citations for its regulations in Chapter I of 14 CFR to reflect the recodification of its statutory authority. No substantive change was intended to any statutory authority by the recodification, and no substantive change is introduced to any regulation by this change.

Although this action is in the form of a final rule and was not preceded by notice and an opportunity for public comment, comments are invited on this action. Interested persons are invited to comment by submitting such written data, views, or arguments as they may desire by March 1, 1996. Comments should identify the rules docket number (Docket No. 28417) and be submitted to the address specified under the caption "FOR FURTHER INFORMATION CONTACT."

Because of the editorial nature of this change, it has been determined that prior notice is unnecessary under the Administrative Procedure Act. It has also been determined that this final rule is not a "significant regulatory action" under Executive Order 12866, nor is it a significant action under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). Further, the editorial nature of this change has no known or anticipated economic impact; accordingly, no regulatory analysis has been prepared.

Adoption of the Amendment

In consideration of the forgoing, the Federal Aviation Administration amends 14 CFR Chapter I effective December 28, 1995.

The authority citation for part 13 is revised to read as follows:

Authority: 18 U.S.C. 6002; 49 U.S.C. 106(g), 5121-5124, 40113-40114, 44103-44106, 44702-44703, 44709-44710, 44713, 46101-46110, 46301-46316, 46501-46502, 46504-46507, 47106, 47111, 47122, 47306, 47531-47532.

Amendment 13-26

Civil Penalties: Streamlined Enforcement Procedures for Certain Security Violations

Adopted: August 23, 1996

Effective: August 26, 1996

(Published in 61 FR 44152, August 28, 1996)

SUMMARY: This final rule establishes streamlined procedures to be used to process civil penalty enforcement actions resulting from certain security violations. The procedures were tested as a result of recommendations made by the Vice President's National Performance Review. This streamlined enforcement process will reduce costs and improve efficiency in factually uncomplicated cases.

be appealable to the National Transportation Safety Board (NTSB). The streamlined procedures contained in this rule do not, however, address the jurisdiction of the NTSB. Therefore, the suggestion is beyond the scope of this rule.

The second commenter suggested that the streamlined procedures be used only in instances where the respondent has admitted the violation because the procedures do not require legal review before an enforcement action is initiated. The commenter expressed concern that those initiating the cases would lack the qualifications to conduct an appropriate review of an enforcement investigative report in order to determine whether the FAA's allegations have been substantiated.

In response, the FAA notes that the streamlined procedures only allow for initiation of factually uncomplicated cases without initial legal review. Any investigation revealing that an alleged violator denies the violation occurred would be too factually complicated for use of the procedures, and the case would be referred to the appropriate Assistant Chief Counsel's office for review. Additionally, the evidence used in the cases affected by the streamlined procedures tends to be uncontroverted evidence contained in police records and airport documentation, as well as screener and respondent statements. FAA security agents have been trained to refer any case that contains contradictory evidence to the legal office for initiation of an enforcement action.

Availability of Regulation

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking (ARM-1), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9677. Requests must include the amendment or docket number.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the *Federal Register's* electronic bulletin board service (telephone: (202) 512-1661) or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service, at the toll-free number 1-800-322-2722 (1-800-FAA-ARAC). Internet users may reach the *Federal Register's* web page at: http://www.access.gpo.gov/su_docs

Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Under 49 U.S.C. 46301(d), the FAA has authority to assess civil penalties not to exceed \$50,000 for certain violations of 49 U.S.C. Subtitle VII, the FAA's regulations (14 CFR parts 1-199), and certain other statutes and orders (see 49 U.S.C. Subtitle III, Chapter 51). In the case of persons other than those acting as a pilot, flight engineer, mechanic, or repairman, the procedures for civil penalty assessment actions are those contained in § 13.16 and part 13, subpart G of the FAA's regulations. The current civil penalty assessment process for these actions is outlined as follows:

During the investigation phase of an enforcement action, FAA investigative personnel ordinarily notify alleged violators of an agency investigation by issuing a letter of investigation. This notification is described in FAA Order 2150.3A, Compliance and Enforcement Program, but is not required by statute, regulation, or that order. Following an investigation, a civil penalty may be assessed against individuals only after notice of the proposed charges and an opportunity for a hearing. This process is begun by issuing a notice of proposed civil penalty to an alleged violator (respondent). Section 13.16(c) delegates the authority to the FAA's Deputy Chief Counsel and certain Assistant Chief Counsel in the regions, centers, and headquarters to issue such notices.

Respondents have several options to respond to the notice of proposed civil penalty. The person charged with a violation is required to do one or more of the following:

- (1) Submit the amount of the proposed civil penalty or an agreed-upon amount.

If a respondent does not respond to the notice of proposed civil penalty, or chooses to proceed informally in response to a notice of proposed civil penalty and the matter is not resolved, the FAA attorney then serves a final notice of proposed civil penalty. The respondent must either request a hearing before an ALJ or pay the amount of the proposed civil penalty, or an agreed-upon amount, within 15 days of receipt of the final notice. If the respondent does not respond to the final notice within the 15-day period, the FAA attorney serves an order assessing civil penalty, which contains a finding of violation and assesses a civil penalty. That order is final and not appealable.

On September 7, 1993, the Vice President's National Performance Review published a report entitled "From Red Tape to Results: Creating a Government that Works Better and Costs Less." That report included a recommendation that the FAA streamline its civil penalty enforcement program by eliminating several of the procedural steps it takes to issue civil penalties in certain minor, uncontested cases. The FAA has determined that streamlined procedures would be most appropriately applied to those legal enforcement actions that facially appear to be simple and factually straightforward.

On August 26, 1994, the FAA issued a Special Federal Aviation Regulation (SFAR) that adopted interim changes to the current rules governing procedures and delegation of authority that were designed to enhance the efficiency and effectiveness of the processing of civil penalty assessment actions in these types of cases. After testing the procedures for 1 year, the FAA found that the streamlined enforcement process reduced costs and improved efficiency; the FAA also believes that safety was enhanced by the swift processing of these enforcement actions within reduced time frames.

In addition to shortening the time for initiating certain cases, the test program encouraged prompt settlement of proposed civil penalties in these cases. The program did not eliminate an individual's opportunity to request a hearing or otherwise contest a proposed civil penalty. This SFAR was made effective for two years, and expires on August 26, 1996 or upon publication of this rule, whichever occurs first.

Discussion of Rule

Scope: These regulatory changes will affect civil penalty assessment actions resulting from factually uncomplicated violations by individuals presenting dangerous or deadly weapons for screening at airports or in checked baggage, for which a civil penalty less than \$5,000 is proposed. While the FAA considers these violations to be serious, the initial evaluation and processing of these cases tends to be uncomplicated. Violations of weapons prohibitions, on the other hand, for which a penalty of \$5,000 or more is sought ordinarily are more factually complex and involve evidence of several aggravating factors. As a result, these cases tend to be more difficult to process, and, therefore, would not be appropriate for handling under these procedures. The FAA does not intend to apply these procedures to complex civil penalty actions, including factually complicated cases under \$5,000.

Procedures and delegations: Current enforcement practice will undergo internal policy changes as well as changes resulting from these procedures. For example, the FAA's current practice of ordinarily issuing to the alleged violator a letter of investigation seeking information about the alleged violation will be dispensed with in cases subject to this rule. Experience has indicated that in the majority of factually clear, uncomplicated cases, the respondent often does not provide additional relevant information that is not already known to the FAA. The information received by the FAA from local law enforcement offices regarding weapons violations at airport screening checkpoints tends to be complete and beyond serious dispute. A respondent, however, will continue to have an opportunity to make any statements and submit any evidence regarding the alleged violation following notification of the alleged violation.

Under these procedures, FAA regional Civil Aviation Security Division Managers and Deputy Division Managers, instead of FAA attorneys, will initiate a legal enforcement action by issuing a notice of violation (NOV) to the respondent. The NOV will cite the relevant facts and circumstances pertaining to the alleged infraction and will include a proposed civil penalty amount. The authority to issue NOV's will not be delegated below the division level. By delegating to the Office of Civil Aviation Security

(3) An offer of settlement or the case, if appropriate, as described below;

(4) The name and phone number of an FAA security special agent involved in the investigation of the violation;

(5) Information regarding informal procedures; and

(6) Information on how to request a formal hearing before a DOT ALJ.

In the NOV, the agency may extend to the respondent a settlement offer to resolve the case immediately with a reduction of the proposed civil penalty, on the condition either that the penalty is paid within 30 days, or, within 30 days, the respondent agrees to execute a promissory note for the penalty amount. A reduced penalty settlement offer will not be extended in cases that involve intentional conduct, repeated violations, or violations associated with felony conduct (other than possession of the weapon itself).

The FAA evaluated the test program for a 1-year period, from December 1, 1994 through December 1, 1995, and discovered that swifter notification of a violation, coupled, in most cases, with an immediate offer of settlement, encouraged quick resolution of simple cases and, at the same time, had no negative impact on the effectiveness of the enforcement process. As a result, the program was expanded to all airports in each of the FAA's domestic regions in January, 1996. The National Performance Review studied a similar program offered by the Federal Highway Administration and found that approximately 40% of proposed civil penalties were paid in this manner within 30 days. The test program data evaluated by the FAA indicates that, during the 1-year evaluation period, approximately 87% of proposed civil penalties processed under these procedures were paid within 90 days of the violation date.

The provisions of the Federal Aviation Regulation will not limit a respondent's rights in any way. An individual may choose to proceed under the current informal and formal procedures, including requesting an informal conference with an FAA attorney or formal hearing before a DOT ALJ. If the FAA and respondent are unable to resolve the case informally, or if the respondent fails to respond to the NOV within 30 days after receiving it, a final notice of violation and civil penalty assessment order ("final notice and order") will be issued to the respondent. This document serves two purposes:

(1) It provides a second opportunity for the respondent to request a hearing on the record before a DOT ALJ; and

(2) It becomes an order assessing a civil penalty if the respondent pays the civil penalty proposed in the final notice and order, or the respondent does not request a hearing in accordance with the final notice and order and fails to pay the amount of the proposed civil penalty.

This streamlined process dispenses with the current procedure requiring a separate order assessing civil penalty to be sent to the respondent when the respondent pays the amount of the civil penalty reflected in the final notice of proposed civil penalty, or when the respondent fails to request a hearing in accordance with the final notice of proposed civil penalty and fails to pay the amount of the proposed civil penalty. The final disposition of the assessment action results from the respondent's act or failure to act upon receipt of the final notice. Issuance of a separate document entitled "order assessing civil penalty" under the existing procedures provides no additional rights or notice to the respondent that is not otherwise given in the final notice and order under these procedures. Accordingly, elimination of the issuance of a separate order assessing civil penalty under these circumstances will not alter the procedural protections afforded respondents.

The final notice and order will be issued by an appropriate Assistant Chief Counsel. The final notice and order will result in either a civil penalty assessment or a formal hearing.

Regulatory Evaluation Summary

Changes to Federal regulations are required to undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination

The rule establishes new procedures to be implemented nation-wide. The procedures cover certain civil penalty cases against individuals submitting dangerous or deadly weapons for screening at airport checkpoints or in checked baggage. The rule will apply only to those cases that facially appear to be simple and are factually straightforward, and that are uncomplicated to process. The rule delegates authority to program office Division and Deputy Division managers to initiate legal enforcement actions and reduces the number of documents issued in these actions. The rule is intended to streamline the agency's civil penalty enforcement process for certain violations by processing these actions within reduced time frames.

Costs

There will be no costs associated with this rule because it consists only of changes to agency rules of procedure or practice in part 13 of the FAA's regulations. The changes do not impose any new economic requirements on the affected parties.

Benefits

The streamlined procedures will reduce the number of documents to be served upon individuals. Additionally, this rule will reduce the time between the violation and the processing of the enforcement action.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a rule will have "a significant economic impact on a substantial number of small entities." FAA Order 2100.14A outlines FAA's procedures and criteria for implementing the RFA. Small entities are defined as independently owned and operated small businesses and small not-for-profit organizations. Because this rule will directly affect certain individuals (who are not defined as entities), the rules will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

Because the rule only will affect certain individuals, it will not constitute a barrier to international trade, including the export of American goods and services to foreign countries and the import of foreign goods and services to the United States.

Federalism Implications

The rule will not have substantial direct effects on the states, on the relationship between the national government and that of any state, or on the distribution of power and responsibilities among the various levels of government. The respondents affected by the amendments are private citizens, not state governments. Therefore, in accordance with Executive Order 12612, it is determined that this regulation will not have federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not a significant regulatory action under Executive Order 12866. This rule is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, this

44709-44710, 44713, 46101-46110, 46301-46316, 46501-46502, 46504-46507, 47106, 47111, 47122,
47306, 47531-47532.

(a) At any time before the issuance of an order under this subpart, the official who issued the notice and the person subject to the notice may agree to dispose of the case by the issuance of a consent order by the official.

(b) A proposal for a consent order, submitted to the official who issued the notice, under this section must include—

(1) A proposed order;

(2) An admission of all jurisdictional facts;

(3) An express waiver of the right to further procedural steps and of all rights to judicial review; and

(4) An incorporation by reference of the notice and an acknowledgment that the notice may be used to construe the terms of the order.

(c) If the issuance of a consent order has been agreed upon after the filing of a request for hearing in accordance with subpart D of this part, the proposal for a consent order shall include a request to be filed with the Hearing Officer withdrawing the request for a hearing and requesting that the case be dismissed.

§ 13.15 Civil penalties: Federal Aviation Act of 1958, as amended, involving an amount in controversy in excess of \$50,000; an *in rem* action; seizure of aircraft; or injunctive relief.

(a) The following penalties apply to persons who violate the Federal Aviation Act of 1958, as amended:

(1) Any person who violates any provision of Title III, V, VI, or XII of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, is subject to a civil penalty of not more than the amount specified in the Act for each violation in accordance with section 901 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1471, *et seq.*).

(2) Any person who violates section 404(d) of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, is subject to a civil penalty of not more

violation in accordance with section 404(d) of section 901 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1374, 1471, *et seq.*).

(3) Any person who operates aircraft for the carriage of persons or property for compensation or hire (other than an airman serving in the capacity of an airman) is subject to a civil penalty of not more than \$10,000 for each violation of Title III, VI, or XII of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, occurring after December 30, 1987, in accordance with section 901 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1471 *et seq.*).

(b) The authority of the Administrator, under section 901 of the Federal Aviation Act of 1958, as amended, to propose a civil penalty for a violation of that Act, or a rule, regulation, or order issued thereunder, and the ability to refer cases to the United States Attorney General, or the delegate of the Attorney General, for prosecution of civil penalty actions proposed by the Administrator, involving an amount in controversy in excess of \$50,000, an *in rem* action, seizure of aircraft subject to lien, or suit for injunctive relief, or for collection of an assessed civil penalty, is delegated to the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and the Assistant Chief Counsel for a region or center.

(c) The Administrator may compromise any civil penalty, proposed in accordance with section 901 of the Federal Aviation Act of 1958, as amended, involving an amount in controversy in excess of \$50,000, an *in rem* action, seizure of aircraft subject to lien, or suit for injunctive relief, prior to referral of the civil penalty action to the United States Attorney General, or the delegate of the Attorney General, for prosecution.

(1) The Administrator, through the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and the Assistant Chief Counsel for a region or center, sends a civil penalty letter to the person charged with a violation of the Federal Aviation Act of 1958, as amended, or a rule, regulation, or order issued thereunder. The civil penalty letter contains a

ney, either orally or in writing, that may explain, mitigate, or deny the violation or that may show extenuating circumstances. The Administrator will consider any material or information submitted in accordance with this paragraph to determine whether the person is subject to a civil penalty or to determine the amount for which the Administrator will compromise the action.

(3) If the person charged with the violation offers to compromise for a specific amount, that person shall send a certified check or money order for that amount, payable to the Federal Aviation Administration, to the agency attorney. The Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, or the Assistant Chief Counsel for a region or center, may accept the certified check or money order or may refuse and return the certified check or money order.

(4) If the offer to compromise is accepted by the Administrator, the agency attorney will send a letter to the person charged with the violation stating that the certified check or money order is accepted in full settlement of the civil penalty action.

(5) If the parties cannot agree to compromise the civil penalty action or the offer to compromise is rejected and the certified check or money order submitted in compromise is returned, the Administrator may refer the civil penalty action to the United States Attorney General, or the delegate of the Attorney General, to begin proceedings in a United States District Court, pursuant to the authority in section 903 of the Federal Aviation Act, as amended (49 U.S.C. 1473), to prosecute and collect the civil penalty.

(Amdt. 13-18, Eff. 9/7/88); (Amdt. 13-20, Eff. 4/20/90)

§ 13.16 Civil Penalties: Federal Aviation Act of 1958, involving an amount in controversy not exceeding \$50,000; Hazardous Materials Transportation Act.

(a) *General.* The following penalties apply to persons who violate the Federal Aviation Act of 1958,

as amended (49 U.S.C. 1471, *et seq.*).

(2) Any person who violates section 404(d) of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, is subject to a civil penalty of not more than the amount specified in the Act for each violation in accordance with section 404(d) or section 901 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1374, 1471, *et seq.*).

(3) Any person who operates aircraft for the carriage of persons or property for compensation or hire (other than an airman serving in the capacity of an airman) is subject to a civil penalty of not more than \$10,000 for each violation of title III, VI, or XII of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, occurring after December 30, 1987, in accordance with section 901 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1471, *et seq.*).

(4) Any person who knowingly commits an act in violation of the Hazardous Materials Transportation Act, or any rule, regulation, or order issued thereunder, is subject to a civil penalty of not more than \$10,000 for each violation in accordance with section 901 of the Federal Aviation Act of 1958, as amended, and section 110 of the Hazardous Materials Transportation Act (49 U.S.C. 1471 and 1809, *et seq.*). An order assessing civil penalty for a violation under the Hazardous Materials Transportation Act, or a rule, regulation, or order issued thereunder, will be issued only after consideration of—

(i) The nature and circumstances of the violation;

(ii) The extent and gravity of the violation;

(iii) The person's degree of culpability;

(iv) The person's history of prior violations;

(v) The person's ability to pay the civil penalty;

(vi) The effect on the person's ability to continue in business; and

(vii) Such other matters as justice may require.

issued if a person charged with a violation submits or agrees to submit a civil penalty for a violation.

(2) An order assessing civil penalty may be issued if a person charged with a violation does not request a hearing under paragraph (e)(2)(ii) of this section within 15 days after receipt of a final notice of proposed civil penalty.

(3) Unless an appeal is filed with the FAA decisionmaker in a timely manner, an initial decision or order of an administrative law judge shall be considered an order assessing civil penalty if an administrative law judge finds that an alleged violation occurred and determines that a civil penalty, in an amount found appropriate by the administrative law judge, is warranted.

(4) Unless a petition for review is filed with a U.S. Court of Appeals in a timely manner, a final decision and order of the Administrator shall be considered an order assessing civil penalty if the FAA decisionmaker finds that an alleged violation occurred and a civil penalty is warranted.

(c) *Delegation of authority.* The authority of the Administrator, under section 901 and section 905 of the Federal Aviation Act of 1958, as amended, and section 110 of the Hazardous Materials Transportation Act, to initiate and assess civil penalties for a violation of those Acts, or a rule, regulation, or order issued thereunder, is delegated to the Deputy Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and the Assistant Chief Counsel for a region or center. The authority of the Administrator to refer cases to the Attorney General of the United States, or the delegate of the Attorney General, for the collection of civil penalties, is delegated to the Chief Counsel, the Deputy Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and the Assistant Chief Counsel for a region or center.

(d) *Notice of proposed civil penalty.* A civil penalty action is initiated by sending a notice of proposed civil penalty to the person charged with a violation of the Federal Aviation Act of 1958, as amended, the Hazardous Materials Transportation Act, or a rule, regulation, or order issued thereunder. A notice of proposed civil penalty will be

the notice of proposed civil penalty, the person charged with a violation shall—

(1) Submit the amount of the proposed civil penalty or an agreed-upon amount, in which case either an order assessing civil penalty or compromise order shall be issued in that amount;

(2) Submit to the agency attorney one of the following:

(i) Written information, including documents and witness statements, demonstrating that a violation of the regulations did not occur or that a penalty or the amount of the penalty is not warranted by the circumstances.

(ii) A written request to reduce the proposed civil penalty, the amount of reduction, and the reasons and any documents supporting a reduction of the proposed civil penalty, including records indicating a financial inability to pay or records showing that payment of the proposed civil penalty would prevent the person from continuing in business.

(iii) A written request for an informal conference to discuss the matter with the agency attorney and to submit relevant information or documents; or

(3) Request a hearing in which case a complaint shall be filed with the hearing docket clerk.

(e) *Final notice of proposed civil penalty.* A final notice of proposed civil penalty may be issued after participation in informal procedures provided in paragraph (d)(2) of this section or failure to respond in a timely manner to a notice of proposed civil penalty. A final notice of proposed civil penalty will be sent to the individual charged with a violation, to the president of the corporation or company charged with a violation, or a person previously designated in writing by the individual, corporation, or company to receive documents in that civil penalty action. If not previously done in response to a notice of proposed civil penalty, a corporation or company may designate in writing another person to receive documents in that civil penalty action. The final notice of proposed civil penalty contains a statement of the charges and the amount of the proposed civil penalty and, as a result of information submitted to the agency attorney during

notice, or

(ii) If the parties participated in any informal procedures under paragraph (d)(2) of this section and the parties have not agreed to compromise the action or the agency attorney has not agreed to withdraw the notice of proposed civil penalty.

(2) Not later than 15 days after receipt of the final notice of proposed civil penalty, the person charged with a violation shall do one of the following—

(i) Submit the amount of the proposed civil penalty or an agreed-upon amount, in which case either an order assessing civil penalty or a compromise order shall be issued in that amount; or

(ii) Request a hearing in which case a complaint shall be filed with the hearing docket clerk.

(f) *Request for a hearing.* Any person charged with a violation may request a hearing, pursuant to paragraph (d)(3) or paragraph (e)(2)(ii) of this section, to be conducted in accordance with the procedures in subpart G of this part. A person requesting a hearing shall file a written request for a hearing with the hearing docket clerk (Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC 20591, Attention: Hearing Docket Clerk) and shall mail a copy of the request to the agency attorney. The request for a hearing may be in the form of a letter but must be dated and signed by the person requesting a hearing. The request for a hearing may be typewritten or may be legibly handwritten.

(g) *Hearing.* If the person charged with a violation requests a hearing pursuant to paragraph (d)(3) or paragraph (e)(2)(ii) of this section, the original complaint shall be filed with the hearing docket clerk and a copy shall be sent to the person requesting the hearing. The procedural rules in subpart G of this part apply to the hearing and any appeal. At the close of the hearing, the administrative law judge shall issue, either orally on the record or in writing, an initial decision, including the reasons for the decision, that contains findings or conclu-

and order of the Administrator have been entered on the record. The FAA decisionmaker shall review the record and issue a final decision and order of the Administrator that affirm, modify, or reverse the initial decision. The FAA decisionmaker may assess a civil penalty but shall not assess a civil penalty in an amount greater than that sought in the complaint.

(i) *Payment.* A person shall pay a civil penalty by sending a certified check or money order, payable to the Federal Aviation Administration, to the agency attorney.

(j) *Collection of civil penalties.* If a person does not pay a civil penalty imposed by an order assessing civil penalty or a compromise order within 60 days after service of the order, the Administrator may refer the order to the United States Attorney General, or the delegate of the Attorney General, to begin proceedings to collect the civil penalty. The action shall be brought in a United States District Court, pursuant to the authority in section 903 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1473), or section 110 of the Hazardous Materials Transportation Act (49 U.S.C. 1809).

(k) *Exhaustion of administrative remedies.* A party may only petition for review of a final decision and order of the Administrator to the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia pursuant to section 1006 of the Federal Aviation Act of 1958, as amended. Neither an initial decision or order issued by an administrative law judge, that has not been appealed to the FAA decisionmaker, nor an order compromising a civil penalty action constitutes a final order of the Administrator for the purposes of judicial appellate review under section 1006 of the Federal Aviation Act of 1958, as amended.

(l) *Compromise.* The FAA may compromise any civil penalty action initiated in accordance with section 901 and section 905 of the Federal Aviation Act of 1958, as amended, involving an amount in controversy not exceeding \$50,000, or any civil penalty action initiated in accordance with section 901 of the Federal Aviation Act of 1958, as amended, and section 110 of the Hazardous Materials

(i) The person agrees to pay a civil penalty.

(ii) The FAA makes no finding of a violation.

(iii) The compromise order shall not be used as evidence of a prior violation in any subsequent civil penalty proceeding or certificate action proceeding.

(2) An agency attorney may compromise the amount of any civil penalty proposed in a notice, assessed in an order, or imposed in a compromise order.

(Amdt. 13-18, Eff. 9/7/88); (Amdt. 13-20, Eff. 4/20/90); (Amdt. 13-21, Eff. 8/2/90)

§ 13.17 Seizure of aircraft.

(a) Under section 903 of the Federal Aviation Act of 1958 (49 U.S.C. 1473), a State or Federal law enforcement officer, or a Federal Aviation Administration safety inspector, authorized in an order of seizure issued by the Regional Administrator of the region, or by the Chief Counsel, may summarily seize an aircraft that is involved in a violation for which a civil penalty may be imposed on its owner or operator.

(b) Each person seizing an aircraft under this section shall place it in the nearest available and adequate public storage facility in the judicial district in which it was seized.

(c) The Regional Administrator or Chief Counsel, without delay, sends a written notice and a copy of this section, to the registered owner of the seized aircraft, and to each other persons shown by FAA records to have an interest in it, stating the—

(1) Time, date, and place of seizure;

(2) Name and address of the custodian of the aircraft;

(3) Reasons for the seizure, including the violations believed, or judicially determined, to have been committed; and

(4) Amount that may be tendered as—

(i) A compromise of a civil penalty for the alleged violation; or

(ii) Payment for a civil penalty imposed by a Federal court for a proven violation.

(1) The alleged violator pays a civil penalty or an amount agreed upon in compromise, and the costs of seizing, storing, and maintaining the aircraft;

(2) The aircraft is seized under an order of a Federal Court in proceedings in rem to enforce a lien against the aircraft, or the United States District Attorney for the judicial district concerned notifies the FAA that the District Attorney refuses to institute those proceedings; or

(3) A bond in the amount and with the sureties prescribed by the Chief Counsel or the Assistant Chief Counsel is deposited, conditioned on payment of the penalty, or the compromise amount, and the costs of seizing, storing, and maintaining the aircraft.

(Amdt. 13-19, Eff. 10/25/89)

§ 13.19 Certificate action.

(a) Under section 609 of the Federal Aviation Act of 1958 (49 U.S.C. 1429), the Administrator may reinspect any civil aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency, and may re-examine any civil airman. Under section 501(e) of the FA Act, any Certificate of Aircraft Registration may be suspended or revoked by the Administrator for any cause that renders the aircraft ineligible for registration.

(b) If, as a result of such a reinspection re-examination, or other investigation made by the Administrator under section 609 of the FA Act, the Administrator determines that the public interest and safety in air commerce requires it, the Administrator may issue an order amending, suspending, or revoking, all or part of any type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate, or air agency certificate. This authority may be exercised for remedial purposes in cases involving the Hazardous Materials Transportation Act (49 U.S.C. 1801 *et seq.*) or regulations issued under that Act. This authority is also exercised by the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and the Assistant Chief Counsel for the region or the Aero-

for the Aeronautical Center or for the region.

(c) Before issuing an order under paragraph (b) of this section, the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, the Assistant Chief Counsel for the region or the Assistant Chief Counsel for the Aeronautical Center advises the certificate holder of the charges or other reasons upon which the Administrator bases the proposed action and, except in an emergency, allows the holder to answer any charges and to be heard as to why the certificate should not be amended, suspended, or revoked. The holder may, by checking the appropriate box on the form that is sent to the holder with the notice of proposed certificate action, elect to—

(1) Admit the charges and surrender his or her certificate;

(2) Answer the charges in writing;

(3) Request that an order be issued in accordance with the notice of proposed certificate action so that the certificate holder may appeal to the National Transportation Safety Board, if the charges concerning a matter under Title VI of the FA Act;

(4) Request an opportunity to be heard in an informal conference with the FAA counsel; or

(5) Request a hearing in accordance with subpart D of this part if the charges concern a matter under Title V of the FA Act.

Except as provided in § 13.35(b), unless the certificate holder returns the form and, where required, an answer or motion, with a postmark of not later than 15 days after the date of receipt of the notice, the order of the Administrator is issued as proposed. If the certificate holder has requested an informal conference with the FAA counsel and the charges concern a matter under Title V of the FA Act, the holder may after that conference also request a formal hearing in writing with a postmark of not later than 10 days after the close of the conference. After considering any information submitted by the certificate holder, the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, the Regional Counsel concerned, or the Aeronautical Center Counsel (as to matters under Title V of the FA Act) issues the order

certificate holder files an appeal with the Board, the Administrator's order is stayed unless the Administrator advises the Board that an emergency exists and safety in air commerce requires that the order become effective immediately. If the Board is so advised, the order remains effective and the Board shall finally dispose of the appeal within 60 days after the date of the advice. This paragraph does not apply to any person whose Certificate of Aircraft Registration is affected by an order issued under this section.

(Amdt. 13-15, Eff. 4/30/80); (Amdt. 13-19, Eff. 10/25/89)

§ 13.20 Orders of compliance, cease and desist orders, orders of denial, and other orders.

(a) This section applies to orders of compliance, cease and desist orders, orders of denial, and other orders issued by the Administrator to carry out the provisions of the Federal Aviation Act of 1958, as amended, the Hazardous Materials Transportation Act, the Airport and Airway Development Act of 1970, and the Airport and Airway Improvement Act of 1982, or the Airport and Airway Improvement Act of 1982 as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987. This section does not apply to orders issued pursuant to section 602 or section 609 of the Federal Aviation Act of 1958, as amended.

(b) Unless the Administrator determines that an emergency exists and safety in air commerce requires the immediate issuance of an order under this section, the person subject to the order shall be provided with notice prior to issuance.

(c) Within 30 days after service of the notice, the person subject to the order may reply in writing or request a hearing in accordance with subpart D of this part.

(d) If a reply is filed, as to any charges not dismissed or not subject to a consent order, the person subject to the order may, within 10 days after receipt of notice that the remaining charges are not dismissed, request a hearing in accordance with subpart D of this part.

notice or proceedings.

(f) If a hearing is requested in accordance with paragraph (c) or (d) of this section, the procedure of subpart D of this part applies. At the close of the hearing, the Hearing Officer, on the record or subsequently in writing, shall set forth findings and conclusions and the reasons therefor, and either—

- (1) Dismiss the notice; or
- (2) Issue an order.

(g) Any party to the hearing may appeal from the order of the Hearing Officer by filing a notice of appeal with the Administrator within 20 days after the date of issuance of the order.

(h) If a notice of appeal is not filed from the order issued by a Hearing Officer, such order is the final agency order.

(i) Any person filing an appeal authorized by paragraph (g) of this section shall file an appeal brief with the Administrator within 40 days after the date of issuance of the order, and serve a copy on the other party. A reply brief must be filed within 20 days after service of the appeal brief and a copy served on the appellant.

(j) On appeal the Administrator reviews the available record of the proceeding, and issues an order dismissing, reversing, modifying or affirming the order. The Administrator's order includes the reasons for the Administrator's action.

(k) For good cause shown, requests for extensions of time to file any document under this section may be granted by—

- (1) The official who issued the order, if the request is filed prior to the designation of a Hearing Officer; or
- (2) The Hearing Officer, if the request is filed prior to the filing of a notice of appeal; or
- (3) The Administrator, if the request is filed after the filing of a notice of appeal.

(l) Except in the case of an appeal from the decision of a Hearing Officer, the authority of the Administrator under this section is also exercised by the Chief Counsel, Deputy Chief Counsel, each Assistant Chief Counsel and the Assistant Chief Counsel for the region or the Aeronautical Center

§ 13.21 Military personnel.

If a report made under this part indicates that, while performing official duties, a member of the Armed Forces, or a civilian employee of the Department of Defense who is subject to the Uniform Code of Military Justice (10 U.S.C. Ch. 47), has violated the Federal Aviation Act of 1958, or a regulation or order issued under it, the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, or the Assistant Chief Counsel for the region or the Aeronautical Center concerned sends a copy of the report to the appropriate military authority for such disciplinary action as that authority considers appropriate and a report to the Administrator thereon.

(Amdt.13-19, Eff. 10/25/89)

§ 13.23 Criminal penalties.

(a) Sections 902 and 1203 of the Federal Aviation Act of 1958 (49 U.S.C. 1472 and 1523), provide criminal penalties for any person who knowingly and willfully violates specified provisions of that Act, or any regulation or order issued under those provisions. Section 110(b) of the Hazardous Materials Transportation Act (49 U.S.C. 1809(b)) provides for a criminal penalty of a fine of not more than \$25,000, imprisonment for not more than five years, or both, for any person who willfully violates a provision of that Act or a regulation or order issued under it.

(b) If an inspector or other employee of the FAA becomes aware of a possible violation of any criminal provision of the Federal Aviation Act of 1958 (except a violation of section 902 (i) through (m) which is reported directly to the Federal Bureau of Investigation), or of the Hazardous Materials Transportation Act, relating to the transportation or shipment by air of hazardous materials, he or she shall report it to the Office of the Chief Counsel or the Assistant Chief Counsel for the region concerned. If appropriate, that office refers the report to the Department of Justice for criminal prosecution of the offender. If such an inspector or other

(a) Whenever it is determined that a person has engaged, or is about to engage, in any act or practice constituting a violation of the Federal Aviation Act of 1958, or any regulation or order issued under it for which the FAA exercises enforcement responsibility, or, with respect to the transportation or shipment by air of any hazardous materials, in any act or practice constituting a violation of the Hazardous Materials Transportation Act, or any regulation or order issued under it for which the FAA exercises enforcement responsibility, the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, the Assistant Chief Counsel for the region concerned, or the Assistant Chief Counsel for the Aeronautical Center may request the United States Attorney General, or the delegate of the Attorney General, to bring an action in the appropriate United States District Court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages, as provided by section 1007 of the Federal Aviation Act of 1958 (49 U.S.C. 1487) and section 111(a) of the Hazardous Materials Transportation Act (49 U.S.C. 1810).

(b) Whenever it is determined that there is substantial likelihood that death, serious illness, or severe personal injury, will result from the transportation by air of a particular hazardous material before an order of compliance proceeding, or other administrative hearing or formal proceeding to abate the risk of the harm can be completed, the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, or the Assistant Chief Counsel for the region concerned may bring, or request the United States Attorney General to bring, an action in the appropriate United States District Court for an order suspending or restricting the transportation by air of the hazardous material or for such other order as is necessary to eliminate or ameliorate the imminent hazard, as provided by section 111(b) of the Hazardous Materials Transportation Act (49 U.S.C. 1810).

(Amdt. 13-19, Eff. 10/25/89)

ineligible for a Certificate of Aircraft Registration, the Hearing Officer shall suspend or revoke the respondent's certificate, as proposed in the notice of proposed certificate action.

(b) If the final order of the Hearing Officer makes a decision on the merits, it shall contain a statement of the findings and conclusions of law on all material issues of fact and law. If the Hearing Officer finds that the allegations of the notice have been proven, but that no sanction is required, the Hearing Officer shall make appropriate findings and issue an order terminating the notice. If the Hearing Officer finds that the allegations of the notice have not been proven, the Hearing Officer shall issue an order dismissing the notice. If the Hearing Officer finds it to be equitable and in the public interest, the Hearing Officer shall issue an order terminating the proceeding upon payment by the respondent of a civil penalty in an amount agreed upon by the parties.

(c) If the order is issued in writing, it shall be served upon the parties.

(Amdt. 13-15, Eff. 4/30/80)

[§ 13.29 Civil penalties: Streamlined enforcement procedures for certain security violations.

【This section may be used, at the agency's discretion, in enforcement actions involving individuals presenting dangerous or deadly weapons for screening at airports or in checked baggage where the amount of the proposed civil penalty is less than \$5,000. In these cases, §§ 13.16(a), 13.16(c), and 13.16(f) through (l) of this chapter are used, as well as paragraphs (a) through (d) of this section:

【(a) *Delegation of authority.* The authority of the Administrator, under 49 U.S.C. 46301, to initiate the assessment of civil penalties for a violation of 49 U.S.C. Subtitle VII, or a rule, regulation, or order issued thereunder, is delegated to the regional Civil Aviation Security Division Manager and the regional Civil Aviation Security Deputy Division Manager for the purpose of issuing notices of violation in cases involving violations of 49 U.S.C. Subtitle VII and the FAA's regulations by

the amount of the proposed civil penalty. Not later than 30 days after receipt of the notice of violation, the person charged with a violation shall:

(1) Submit the amount of the proposed civil penalty or an agreed-upon amount, in which case either an order assessing a civil penalty or a compromise order shall be issued in that amount; or

(2) Submit to the agency attorney identified in the material accompanying the notice any of the following:

(i) Written information, including documents and witness statements, demonstrating that a violation of the regulations did not occur or that a penalty or the penalty amount is not warranted by the circumstances; or

(ii) A written request to reduce the proposed civil penalty, the amount of reduction, and the reasons and any documents supporting a reduction of the proposed civil penalty, including records indicating a financial inability to pay or records showing that payment of the proposed civil penalty would prevent the person from continuing in business; or

(iii) A written request for an informal conference to discuss the matter with an agency attorney and submit relevant information or documents; or

(3) Request a hearing in which case a complaint shall be filed with the hearing docket clerk.

[(c) *Final notice of violation and civil penalty assessment order.* A final notice of violation and civil penalty assessment order ("final notice and order") may be issued after participation in any informal proceedings as provided in paragraph (b)(2) of this section, or after failure of the respondent to respond in a timely manner to a notice of violation. A final notice and order will be sent to the individual charged with a violation. The final notice and order will contain a statement of the charges and the amount of the proposed civil penalty and, as a result of information submitted to the agency attorney during any informal procedures, may reflect a modified allegation or proposed civil penalty.

A final notice and order may be issued—

assessing civil penalty may be issued after notice and opportunity for a hearing. A person charged with a violation may be subject to an order assessing civil penalty in the following circumstances:

(1) An order assessing civil penalty may be issued if a person charged with a violation submits, or agrees to submit, the amount of civil penalty proposed in the notice of violation.

(2) An order assessing civil penalty may be issued if a person charged with a violation submits, or agrees to submit, an agreed-upon amount of civil penalty that is not reflected in either the notice of violation or the final notice and order.

(3) The final notice and order becomes (and contains a statement so indicating) an order assessing a civil penalty when the person charged with a violation submits the amount of the proposed civil penalty that is reflected in the final notice and order.

(4) The final notice and order becomes (and contains a statement so indicating) an order assessing a civil penalty 16 days after receipt of the final notice and order, *unless* not later than 15 days after receipt of the final notice and order, the person charged with a violation does one of the following—

(i) Submits an agreed-upon amount of civil penalty that is not reflected in the final notice and order, in which case an order assessing civil penalty or a compromise order shall be issued in that amount; or

(ii) Requests a hearing in which case a complaint shall be filed with the hearing docket clerk.

(5) Unless an appeal is filed with the FAA decisionmaker in a timely manner, an initial decision or order of an administrative law judge shall be considered an order assessing civil penalty if an administrative law judge finds that an alleged violation occurred and determines that a civil penalty, in an amount found to be appropriate by the administrative law judge, is warranted.

